

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT OSTWINKLE,

Claimant,

vs.

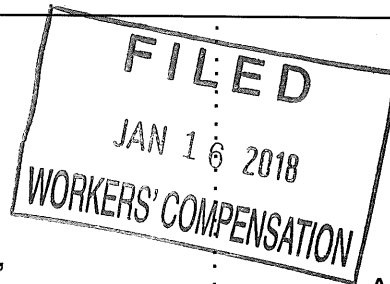
MATHY CONSTRUCTION,

Employer,

and

ZURICH AMERICAN INSURANCE
COMPANY,

Insurance Carrier,
Defendants.



File No. 5052719

ALTERNATE MEDICAL
CARE DECISION

Head Note No.: 2701

STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant. The undersigned has been delegated final agency action in this decision. Iowa Code section 17A.15(1).

This is the fourth alternate medical care hearing claimant has had. Claimant testified via telephone. He was represented by Mr. Dirk Hamel. Defendants were represented by Mr. Tom Wolle. Defendants elected not to call any witnesses.

Claimant submitted exhibits marked 1 through 4. Defendants submitted exhibit A.

Claimant has had a protracted medical history since his work injury. His latest appointment was with Cassim Igram, M.D., on December 13, 2017. (Exhibit 3) Dr. Igram opined:

Staff Physician Note

History:

This is a 62-year-old man who comes in today with complaints of back and right leg pain. He had a work-related injury and comes in today with the above-noted complaints. He has had prior surgical intervention by Dr. Abernathy [sic]. He apparently was put at MMI from that injury. His complaints are ongoing. He comes in today for evaluation.

Physical Exam:

On physical exam he is alert and oriented x3 and answers questions appropriately. He does relate radicular type symptoms in [sic] into the right leg. Really no specific motor deficits. He does have some subjective numbness in the right leg. MRI scan was reviewed. He does have multilevel degenerative changes. I do not see significant stenosis or nerve root impingement on the study that would warrant surgical intervention.

Assessment/Plan:

Assessment is back and right leg pain. This point in time I would be inclined to not recommend surgical intervention. I think he may benefit from evaluation by physical medicine rehabilitation.

(Ex. 3, p. 8)

Defendants agreed to authorize treatment with Timothy Miller, M.D., a specialist in rehabilitation. Dr. Miller practices medicine in Dubuque, Iowa. Claimant resides in Cascade, Iowa, which is located in Dubuque County. Travel to and from Dubuque for treatment is not an issue. Claimant testified he had previously participated in two separate sessions of physical therapy. He did not find the sessions particularly helpful because he testified he still has ongoing problems with his back and right leg.

Claimant and his attorney are now requesting an appointment with a specialist at one of the following institutions:

1. American Center of Spine and Neurosurgery;
2. Loyola Medicine;
3. University of Wisconsin Orthopedic Clinic in Madison, WI;
4. Northwestern Medical School in Chicago;
5. Twin Cities Spine Center in Minneapolis and St. Paul, MN.

Mr. Wolle's position was expressed in Exhibit A. He stated in relevant part:

We do not agree to authorize an appointment with any of the providers you suggested in your letter of October 23, 2017. There is no need whatsoever to seek opinions from providers in Milwaukee, Chicago, etc. There are excellent orthopedic surgeons and neurosurgeons around here, and there have been no suggestions by any of them that any further surgical intervention is appropriate.

Prior to the date of the hearing, Mr. Hamel represented to Mr. Wolle and to the undersigned, that his legal assistant contacted the five institutions listed above. The assistant asked each institution the following questions about examining claimant:

- A. Do an assessment?
- B. Make a recommendation for future care and treatment?
- C. Provide the care and treatment?

Mr. Hamel stated all five of the institutions were willing to examine claimant and to make recommendations.

CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

The employee bears the burden to establish what care is reasonable and it is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995). The determination will be based on what is reasonably necessary. Long, at 124.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

Claimant is still having problems with his right leg and back. He testified it is difficult for him to walk. Based upon the representatives made by Mr. Hamel that the University of Wisconsin Orthopedic Clinic in Madison, Wisconsin, already agrees to see and to assess claimant's condition, I am authorizing a one-time consultation with an orthopedic doctor there.

All of claimant's medical records shall be forwarded to the physician prior to the date of the medical appointment, as well as copies of the arbitration decision, and the alternate medical care decisions. The orthopedic specialist should have a detailed medical profile of claimant's condition prior to the examination and consultation.

Defendants shall schedule the appointment within ten (10) days of the filing of this decision.

ORDER

IT IS THEREFORE ORDERED:

Within ten (10) days of the filing of this order, defendants shall schedule an appointment for claimant with an orthopedic doctor at the University of Wisconsin Orthopedic Clinic in Madison, Wisconsin. All relevant medical records shall be forwarded to the University of Wisconsin Orthopedic Clinic prior to the initial appointment, as well as copies of all decisions.

Signed and filed this 16th day of January, 2018.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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